

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. H-10-697
	§	
KAREN MARIA ALVARENGA	§	
CANALES	§	

MEMORANDUM AND ORDER


This criminal case is before the Court on Defendant Karen Maria Alvarenga Canales's Motion to Proceed Under Newly Recognized Right as Defined by the United States Supreme Court [Doc. # 30]. Defendant argues that the Supreme Court's decision in *Descamps v. United States*, ___ U.S. ___, 133 S. Ct. 2276 (2013), requires that her sentence be modified. The Court **denies** Defendant's Motion.

Defendant was sentenced on March 2, 2011. The Judgment in a Criminal Case [Doc. # 28] was entered on March 10, 2011. Title 18, United States Code, section 3582(c) provides that a "court may not modify a term of imprisonment once it has been imposed except" in very limited circumstances, none of which apply in this case. *See* 18 U.S.C. § 3582(c); *United States v. Marion*, 79 F. App'x 46 (5th Cir. Oct. 22, 2003).

Defendant's reliance on the Supreme Court's recent decision in *Descamps* is unavailing. Initially, the *Descamps* case involved convictions under the Armed Career Criminal Act. Defendant Canales was convicted of illegal reentry into the United States following deportation, and this Court is unaware of any case applying *Descamps* to a conviction for that crime. Additionally, the Supreme Court has clearly stated that a new rule is not applied retroactively unless the Supreme Court specifically holds it to be retroactive. *See Tyler v. Cain*, 533 U.S. 656, 663 (2001). "The Supreme Court has not declared its decision in *Descamps* to be retroactively applicable on collateral review, nor has the undersigned found any cases applying *Descamps* retroactively to cases on collateral review." *See Strickland v. English*, 2013 WL 4502302, *8 (N.D. Fla. Aug. 22, 2013). Consequently, the Court is without jurisdiction to grant Defendant's request that her sentence be modified. It is hereby

ORDERED that Defendant's Motion to Proceed Under Newly Recognized Right as Defined by the United States Supreme Court [Doc. # 30] is **DENIED**.

Signed at Houston, Texas, this 24th day of **September, 2013**.


Nancy F. Atlas
United States District Judge